

High Court Refuses to Stop Jailing of 'Papers' Figure

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The Supreme Court refused yesterday to intervene to prevent the jailing of Harvard scholar Samuel L. Popkin for contempt in refusing to answer a grand jury's questions about the Pentagon Papers.

With only Justice William O. Douglas noting his dissent, the court rejected Popkin's attempt to delay a court order which could lead to his imprisonment.

The grand jury in Boston has been investigating the unauthorized disclosure of the Pentagon's history of the Vietnam war and the steps leading to its private publication by the Beacon Press.

Popkin, an authority on Vietnamese village life, has answered some grand jury questions but has refused to answer others, including whether he talked about the papers with Daniel Ellsberg, the man who leaked them to the press.

Whether Popkin goes to jail now depends on the U.S. District Court in Boston.

A Justice Department

spokesman said there were no immediate plans to recall the grand jury, but he declined further comment.

Popkin, backed by two dozen other academicians, claimed what he called a "scholar's privilege" in refusing to answer certain grand jury questions. The privilege, not recognized in the courts, was said to be akin to the newsman's right to protect his confidential sources—itself only a claimed right the Supreme Court rejected last June.

Solicitor General Erwin N. Griswold, himself a former law dean at Harvard, said Popkin's case did not actually raise the question of a scholar's privilege.

He noted that Popkin was not trying to protect government officials or others who gave him confidential information about the war. He was questioned "merely about conversations with other scholars," Griswold said.

According to the scholars, who included John Kenneth Galbraith and John K. Fairbank of Harvard, important

future research will be frustrated if the researcher can be forced to divulge confidences.

Popkin balked at telling the jury who told him the identities of participants in the Pentagon's war study and whether Ellsberg discussed the papers with him before their contents was divulged in June, 1971.

Ellsberg, who is under indictment on charges of conspiring to violate espionage laws in connection with the papers, has a separate petition pending in the high court. He and co-defendant Anthony Russo contend that their Los Angeles trial should not go forward until they are permitted to inspect records of allegedly illegal government wiretapping of a member of the defense team.